THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. **SUPERIOR COURT**

JOSEPH LARAMIE

V.

BRUCE CATTELL, SHAWN STONE, TODD CONNOR,
AND THE STATE OF NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

NO.06-C-224

*****

TIMOTHY HALLEM

V.

BRUCE CATTELL, SHAWN STONE, TODD CONNOR,
AND THE STATE OF NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

NO. 06-C-225

OPINION AND ORDER

LYNN, C.J.

The plaintiffs, Joseph Laramie and Timothy Hallam, brought separate actions against the above-captioned defendants, their employer, the New Hampshire Department of Corrections (DOC), their supervisor, Bruce Cattell, and co-workers Shawn Stone and Todd Connor. The cases were consolidated for pretrial purposes on August 14, 2006, since plaintiffs' writs set forth virtually identical claims against the same defendants. In Count I of their writs, plaintiffs assert a claim against DOC for wrongful termination of their employment. Counts II and III allege, respectively, claims of intentional infliction of emotional distress and intentional interference with contractual relations against all the individual defendants. Count IV asserts a claim against defendant Cattell, warden of the New Hampshire State Prison in Concord at the relevant

times, for deprivation of plaintiffs' civil rights, in violation of 42 U.S.C. § 1983 ("§ 1983"). Lastly, Count V asserts a claim for the so-called "false light" variety of tortuous invasion of privacy, which plaintiff Laramie brings against defendants Stone and Connor and plaintiff Hallem brings against all individual defendants. Presently before the court are the defendants' motions for summary judgment. After reviewing the record and the arguments of the parties, I conclude that the motions must be granted in part and denied in part.

I. Factual Background

Viewed in the light most favorable to plaintiffs as the non-moving parties, Vandermark v. McDonald's Corp., 153 N.H. 753, 757 (2006), the record reveals the following pertinent facts. This litigation arises from an incident which occurred at the New Hampshire State Prison in Concord on April 12, 2005. Along with defendant Stone, then a corrections officer at the prison, corporal Glenn Daniels and corrections officers Mark Todt and Jessica Millette were involved in extracting inmate Michael Kelly from his cell after he refused to leave when ordered. Plaintiff Hallam, a sergeant at the prison and head of the First Response Team, together plaintiff Laramie and defendant Connor, both corrections officers, responded to the scene to escort Kelly from the cell area. During or immediately after the extraction, Kelly insisted that an officer had punched him in the side and lower back while he was handcuffed. A short time later, Kelly said that it was Stone who had punched him. Kelly also stated that the officer who assaulted him was on his left side. There is evidence that Connor had been on the inmate's left side during the extraction; Laramie was on Kelly's right side. Kelly repeatedly and consistently reported that it was not Laramie that assaulted him. Defs.' Exh F, Wefers

Report, at 3-4.

A number of officers submitted reports regarding this incident on the day it occurred. Of these, Hallam's report was the only one that referenced a potential assault on Kelly; it stated that Kelly alleged "all of the officers involved" had assaulted him. Wefers Report at 40. On April 19, 2005, Connor submitted an additional report stating he had witnessed Laramie assault Kelly, and had reported the assault to Hallam on the day it occurred.

On April 25, 2005, Cattell ordered a further investigation of the incident. As a result of the investigation, Cattell concluded that Laramie struck Kelly during the escort, while Kelly was restrained and in handcuffs. Defs.' Exh C, Cattell Aff., at 2. He further concluded that Connor and Stone reported the assault to Hallam, and Hallam failed to take appropriate steps to document the allegations of assault. Id. Cattell dismissed Hallam from employment on July 13, 2005, and dismissed Laramie on July 15, 2005. The terminations were based on findings that Hallam and Laramie violated DOC policies and procedures by making false official statements, failing to report an offense, obstructing investigative activity, engaging in dereliction of duty, failing to follow the DOC code of ethics, failing to safeguard residents in DOC facilities, and (as to Laramie only) abusing an inmate under DOC control. Cattell Aff. at 2.

Hallam and Laramie appealed their terminations to the New Hampshire Personnel Appeals Board ("PAB") pursuant to RSA 21-I:58. The PAB conducted three days of hearings and ultimately found that the terminations were unjust. Laramie and Hallam were reinstated with back pay, benefits, and seniority. The DOC did not appeal.

In an affidavit submitted in opposition to the summary judgment motions, Hallam

avers that Cattell had a long-standing personal animus toward him. As evidence of the animus, Hallam points to an October 20, 2003, letter of warning he received from Cattell for an unrelated incident involving Hallam's alleged failure to properly report information he had received about an escape planned by several inmates. Hallam appealed the warning to the PAB, which ordered that the letter of warning be removed from Hallam's personnel file. The PAB's decision was rendered on May 25, 2005, approximately seven weeks before Cattell dismissed Hallam; and, according to Hallam, the PAB's decision "angered the warden." Pltfs.' Exh. 2, Hallam Aff., at ¶ 33. Hallam also points to an October 2004 incident, in which Cattell removed Hallam as an instructor at the Correctional Officer Academy. Hallam filed a grievance as a result of this action as well, and although Hallam's affidavit does not indicate the outcome of the grievance, it does state that shortly after the grievance was filed, Cattell confronted him and said, "who do you think you are reporting me to the commandant of the academy?" Id. at ¶ 35.

It is undisputed that no other DOC employees were disciplined as a result of the Kelly incident.

II. Summary Judgment Standard

For a moving party to prevail on a motion for summary judgment, "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits filed, [must] show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." RSA 491:8-a, III (1997). In ruling on the motion, the court must construe all materials submitted in the light most favorable to the nonmovant. Metropolitan Prop. & Liab. Ins. Co. v. Walker, 136 N.H. 594, 596 (1993). However, the party opposing the motion "may not rest upon [the] mere allegations or

denials of his pleadings, but ... must set forth specific facts showing that there is a genuine issue for trial." RSA 491:8-a, IV; Gamble v. University of New Hampshire, 136 N.H. 9, 16-17 (1992); ERA Pat Demarais Assoc's. v. Alex. Eastman Foundation, 129 N.H. 89, 92 (1986). A dispute of fact is "genuine" if "the evidence is such that a reasonable [factfinder] could return a verdict for the nonmoving party," and "material" if it "might affect the outcome of the suit." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)(construing analogous language of Fed.R.Civ.P. 56); accord. Palmer v. Nan King Restaurant, Inc., 147 N.H. 681, 683 (2002); Horse Pond Fish & Game Club v. Cormier, 133 N.H. 648, 653 (1990).

Where, as here, the nonmoving party bears the burden of persuasion at trial, that party must "make a showing sufficient to establish the existence of [the] element[s] essential to [its] case" in order to avoid summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). And while the court cannot weigh the contents of the parties' affidavits and resolve factual issues, "[the trial court] must determine whether a reasonable basis exists to dispute [at trial] the facts claimed in the moving party's affidavit." Iannelli v. Burger King Corp., 145 N.H. 190, 193 (2000).

III. Analysis

A. Count I - Wrongful Termination

To succeed on a claim for wrongful termination, a plaintiff must prove: "(1) [that] the termination of employment was motivated by bad faith, retaliation or malice; and (2) that she [or he] was terminated for performing an act that public policy would encourage or for refusing to do something that public policy would condemn." Karch v. BayBank FSB, 147 N.H. 525, 536 (2002). Ordinarily, the question of whether the public policy

element of a wrongful termination claim has been satisfied is a factual issue for the jury to decide. Cilley v. N.H. Ball Bearings, Inc., 128 N.H. 401, 406 (1986) (citing Cloutier v. A & P Tea Co., Inc., 121 N.H. 915, 924 (1981)). However, in some instances "the presence or absence of . . . a public policy is so clear that a court may rule on its existence as a matter of law." Short v. School Admin. Unit 16, 136 N.H. 76, 84 (1992).

Plaintiffs claim they satisfy the first prong of wrongful termination because their dismissals were retaliatory, as evidenced by the DOC's failure to discipline other employees involved in the April 12 incident. They argue that their long-term employment with the DOC, and what they characterize as Cattell's disregard of the evidence, makes the issue of bad faith a question of fact. Plaintiffs further maintain that they satisfy the second prong of wrongful termination because they were terminated for telling the truth during the course of the investigation ordered by Cattell. They maintain their terminations violate the public policy which encourages employees to be truthful.

While a firing for refusing to lie would indeed satisfy the public policy component of a wrongful termination claim, Cilley, 128 N.H. at 406, I hold that plaintiffs' have failed to adduce sufficient evidence to raise a triable issue that such conduct was the precipitating cause of their discharge. Three important considerations compel this conclusion. First, there is no evidence that Cattell ever suggested or intimated to plaintiffs in any way, either directly or through underlings, that they should be less than candid in their reports or statements about the incident involving inmate Kelly. See Slater v. Verizon Communications, Inc., 2005 WL 488676, pp. 5, 6 (D.N.H.). Second, there is no evidence that Cattell ever suggested or intimated to Connor or Stone that they should falsely accuse plaintiffs of wrongdoing. Third, there is no evidence of any

pre-existing animus between Stone and Connor, on the one hand, and plaintiffs, on the other, that might have given Cattell reason to be suspicious of the formers' veracity.[1]

Given the absence of evidence of the kind just described, the mere fact that there may have been prior bad blood between Hallam and Cattell is not sufficient to support an inference that Cattell knew Stone and Connor's statements about the Kelly incident were false. Rather, the only inference fairly supported by the record is that Cattell fired plaintiffs because he determined they had not told the truth. Although Cattell's decision was later set aside by the PAB following a de novo hearing, the PAB's ruling merely reflects that it reached a different conclusion from the conflicting evidence than had Cattell. Notwithstanding the PAB's ruling, the fact remains that, in reaching his decision, Cattell had before him the statements of two of plaintiffs' co-workers, Connor and Stone, indicating that Laramie had in fact assaulted Kelly and that Hallam was aware of the assault and attempted to cover it up (or at least minimize it).

In sum, the record contains conflicting evidence that would support either a finding that plaintiffs did engage in misconduct justifying dismissal (as found by Cattell) or that they did not (as found by the PAB). The PAB's decision establishes that Cattell may have made the wrong decision in firing plaintiffs, but the record is not sufficient to permit a factfinder to determine that it was a decision predicated upon punishing a

[1] Plaintiffs make much of the facts that (1) Kelly himself denied that it was Laramie who had assaulted him and (2) Connor did not report that he had seen Laramie assault Kelly until after he knew that Kelly's version of the incident could support a finding that he (Connor) had committed the assault. But as Cattell explained at the PAB hearing, see Pltfs.' Exh. 8, Tr. of PAB Hrg., Feb. 1, 2006, at 4-5, inmates routinely make complaints against corrections officers, many of which are ultimately determined to be unfounded. This reality not only affects the credence given to inmate reports, it also provides little incentive for a corrections officer to fabricate allegations against a fellow officer as a defense to an inmate complaint. Thus, when a report of officer abuse of an inmate is made by a fellow officer, that circumstance alone tends to give the report inherent credibility – particularly where, as here, there is no history of prior animosity between the complainants (Stone and Connor) and those complained against (Laramie and Hallam).

public policy favoring employee truthfulness.[2]

Accordingly, summary judgment in favor of DOC is **GRANTED** on Count I of the writs.

B. Count II - Intentional Infliction of Emotional Distress

A claim for intentional infliction of emotional distress (IIED) requires that the defendant cause severe emotional distress, intentionally or recklessly, by extreme and outrageous conduct. Restatement (Second) of Torts § 46, at 71 (1965). Emotional distress must have in fact resulted from the defendant's conduct, and the distress must be severe. Morancy v. Morancy, 134 N.H. 493, 496 (1991).

> It is not enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized as 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society.

Restatement (Second) of Torts § 46, cmt. d at 73.

The court is the initial gatekeeper for IIED claims, determining whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. See Konefal & A. V. Hollis/Brookline Cooperative School District, 143 N.H. 256, 260 (1998). A defendant's position of relative authority over the plaintiff is relevant to whether his actions could reasonably be construed as extreme and outrageous. "The extreme and outrageous character of the conduct may arise from an

[2] That DOC did not discipline other corrections officers who also may have been less than completely forthcoming concerning their knowledge of the Kelly incident has no bearing on the public policy element of wrongful termination because this element focuses on the conduct of the employee, not that of the employer. See Frechette v. Wal-Mart Stores, Inc., 925 F.Supp. 95, 98 (D.N.H. 1995).

abuse by the actor of a position, or a relation with the other, which gives him actual or apparent authority over the other, or power to affect his interests." Id., cmt. e at 74.

Here, plaintiffs allege that defendants accused them of wrongdoing and Cattell terminated their employment in bad faith, aware that plaintiffs had not committed terminable offenses. They argue that a reasonable jury could conclude that falsely accusing another person of misconduct amounts to extreme and outrageous conduct. The defendants counter that the actions alleged are not extreme and outrageous as a matter of law. I agree with the defendants.

Assuming Connor and Stone lied during the course of the investigation, plaintiffs offer no evidence that Cattell knew they were lying or that he abused his position of power over them. Instead, the record indicates that Cattell made a credibility judgment on the basis of conflicting versions of the April 12 incident. As discussed previously, Cattell may have made the wrong decision but bad judgment does not amount to extreme and outrageous conduct. Konefal, 143 N.H. at 260.

Nor do the allegations against Connor and Stone amount to extreme and outrageous conduct. Plaintiffs allege that Connor and Stone lied about their own involvement in the assault and falsely accused Laramie of the assault and Hallam of a cover up. Assuming plaintiffs' pleadings to be true and construing all reasonable inferences in their favor, at worst Connor and Stone colluded to set up Laramie and Hallam in order to protect their own interests. Self-protection, even lying to cover up misconduct, is not extreme and outrageous conduct because it does not "go beyond all possible bounds of decency." Restatement (Second) of Torts § 46, cmt. d at 73. See LaDuke v. Lyons, 673 N.Y.S.2d 240, 244 (N.Y.App.Div. 3 Dept. 1998) (even if co-

employees intentionally relayed false allegations that plaintiff had euthanized patient under her care, conduct was not sufficiently outrageous to state cause of action for intentional infliction of emotional distress); accord. Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988) ("it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress"); Purdy v. City of Nashua, 2000 WL 620579 (D.N.H.) (same).[3]

Summary judgment therefore is **GRANTED** in favor of all defendants on Count II of the writs.

C. Count III - Intentional Interference With Contractual Relations

A claim for tortious interference with contractual relations requires a showing: "(1) the plaintiff had an economic relationship with a third party; (2) the defendant knew of this relationship; (3) the defendant intentionally and improperly interfered with the relationship; and (4) the plaintiff was damaged by such interference." Demetracopoulos v. Wilson, 138 N.H. 371, 373-74 (1994) (quoting Jay Edwards, Inc. v. Baker, 130 N.H. 41, 46 (1987)) (emphasis in original). "To establish that the defendant's conduct was improper, the plaintiff ha[s] to 'show that the interference with his contractual relations was either desired by the [defendant] or known by him to be a substantially certain result of his conduct.'" Id. (quoting Restatement (Second) of Torts § 767, cmt. d at 32 (1977)).

Plaintiffs contend that defendants intentionally interfered with their contractual relations with the DOC by falsely accusing them of wrongdoing, which caused them to

[3] The conduct of Stone and Connor, as alleged by plaintiffs, appears decidedly less egregious than that alleged against defendant Gordon in the Karch case. See 147 N.H. at 528-29, 531.

be terminated. They claim all of the individual defendants knew neither plaintiff had committed a terminable offense, and it was foreseeable to Cattell that his conduct would cause plaintiffs serious harm. Defendants counter that there is no evidence of intentional and improper interference with the plaintiffs' employment. Cattell contends he was following DOC policy when he requested an investigation into the alleged assault and that he terminated plaintiffs' employment based on the results of that investigation. Connor and Stone also maintain they were following DOC policy when they reported the inmate assault and participated in the investigation.

The record shows that Cattell received conflicting evidence about the alleged assault and determined that the balance weighed in favor of Connor and Stone and against Laramie and Hallam. Cattell was no doubt aware that firing plaintiffs would cause them injury, but the record would not support a jury finding that he knew they had not committed terminable offenses when he fired them. Because plaintiffs have not offered sufficient evidence to raise a triable issue of intentional and improper conduct by Cattell, his motion for summary judgment is **GRANTED** against both plaintiffs on Count III of the writs.

On the other hand, plaintiffs do offer evidence of intentional wrongdoing by Connor and Stone. Crediting the plaintiffs' version of events, Connor and Stone lied during the investigation, either intending or at least knowing that their false accusations would adversely affect plaintiffs' employment. Accordingly, the motion for summary judgment is **DENIED** as to Connor and Stone on Count III.

D. Count IV - 42 U.S.C. § 1983

Laramie and Hallam allege a federal § 1983 claim against Cattell in his individual

capacity for violation of their civil rights. They assert that Cattell, acting under the color of state law, ordered and approved their terminations. They claim the terminations were not justified and that Cattell's conduct constituted an "unlawful and unconstitutional interference with [their] property interest in [their] job[s] and their liberty interest in their good name[s] and reputation[s]." Laramie Writ ¶ 59; Hallam Writ ¶ 63.

To establish a violation of 42 U.S.C. § 1983, a plaintiff must prove (1) the defendant deprived him of his "rights, privileges or immunities secured by the Constitution or laws of the United States"; and (2) the defendant acted under color of state law. Martinez-Velez v. Simonet, 919 F.2d 808, 810 (1st Cir. 1990) (quoting Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327 (1986)). The doctrine of qualified immunity, however, provides an affirmative defense to claims of constitutional violations against public officials. Richardson v. Chevrefils, 131 N.H. 227, 231 (1988). It protects officials who were performing discretionary functions if their conduct did not violate clearly established statutory or constitutional rights. Id.; Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Ringuette v. City of Fall River, 146 F.3d 1, 5 (1st Cir. 1998).

Cattell maintains he is entitled to qualified immunity because he was performing a discretionary function and did not violate a clearly established constitutional right. The termination of employment by a supervisor is unquestionably a discretionary function. I therefore turn to the matter of the constitutional rights plaintiffs claim were violated. See Richardson 131 N.H. at 231. The purpose of this inquiry, which focuses on whether the rights in question were clearly established, is "to ensure that defendants reasonably can anticipate when their conduct may give rise to liability, by attaching liability only if [t]he

contours of the right [violated are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." United States v. Lanier, 520 U.S. 259, 270 (1997) (citations and quotations omitted); Anderson v. Creighton, 483 U.S. 635, 640 (1987). In Limone v. Condon, 372 F.3d 39, 44 (1st Cir. 2004), the court articulated the three step test it has developed for assessing whether a state actor is entitled to qualified immunity:

> (i) whether the plaintiff's allegations, if true, establish a constitutional violation; (ii) whether the constitutional right at issue was clearly established at the time of the putative violation; and (iii) whether a reasonable officer, situated similarly to the defendant, would have understood the challenged act or omission to contravene the discerned constitutional right.

Here, plaintiffs fail at the first level because their allegations, even if true, do not establish a constitutional violation. Dealing first with plaintiffs' claimed property interests, as state employees Laramie and Hallam did not have protected property interests in their jobs. The Fourteenth Amendment to the United States Constitution protects an individual's interest in property from interference by the state without due process of law. Board of Regents v. Roth, 408 U.S. 564, 576 (1972). However, that protection is accorded only to "interests that a person has already acquired in specific benefits." Id. In New Hampshire, "public employment is not a constitutionally protected property right of the employee." Appeal of Parker, 121 N.H. 986, 988 (1981). Because plaintiffs did not actually have a property interest in their employment with DOC, they were not entitled to due process. Roth, 408 U.S. at 576-78. Moreover, even if there had been a protected property interest, due process would have entitled plaintiffs merely to the opportunity to present their version of the incident and to appeal their terminations. Here, plaintiffs were granted all the process they were due by virtue of

their PAB appeal, and indeed were successful in overturning their dismissals.

Plaintiffs next argue that their liberty interest in pursuing their chosen vocations was violated. The Richardson court held that an individual has a liberty interest "in continuing to pursue an occupational calling that he has [heretofore] exercised." 131 N.H. at 235-37. Richardson recognized a liberty interest in the plaintiff's status as a person qualified to practice social work on the staff of child care institutions, and determined that such status was extinguished when the plaintiff's name was listed in a state registry "as ... a perpetrator of sexual abuse, thereby rendering him unemployable in any such institution in New Hampshire." Id. (emphasis added). Here, in contrast, plaintiffs were not similarly deprived of their ability to practice their chosen vocation. Because the PAB reinstated both plaintiffs to their positions at DOC, with back pay, benefits and seniority, they have suffered no violations of protected liberty interests.

Accordingly, summary judgment is **GRANTED** in favor of Cattell on Count IV of the writs.

E. Count V – False Light Invasion of Privacy

Laramie asserts a claim against Connor and Stone for the false light variety of invasion of privacy; Hallam advances a similar claim against Stone, Connor and Cattell. Because the New Hampshire Supreme Court has not yet addressed whether this state recognizes this tort, see Thomas v. Telegraph Publishing Co., 151 N.H. 435, 440 (2004), I look to the Restatement (Second) of Torts, § 652E (1977) for a definition of terms:

> A person who publicizes a matter concerning another, placing him in a false light, is subject to liability to the other for invasion of his privacy, if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

To be considered "highly offensive" the publicized matter must be such that "the defendants know that the plaintiff, as a reasonable man, would be justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity." Id., cmt. c at 396.

Laramie contends that Connor and Stone placed him in a false light by falsely reporting that he struck inmate Kelly; and Hallam asserts that Stone, Connor and Cattell, published statements indicating that he had attempted to cover up or minimize the incident. Both plaintiffs assert that defendants' conduct was such as to be highly offensive to a person of ordinary sensibilities.

Defendants argue that even if the reports they filed implicating Laramie and Hallam in wrongdoing are assumed to be false, they are not "highly offensive" because an accusation is not deemed valid until it is fully investigated. Connor and Stone further assert that they legitimately believed Laramie had assaulted Kelly, and that Laramie has not presented evidence that they had knowledge of or acted in reckless disregard as to the falsity of their accusations. Finally, defendants argue that Laramie and Hallam have failed to allege sufficient facts to meet the publicity element of false light invasion of privacy because their statements were given in the context of a confidential DOC investigation and were not publicly disclosed. Aside from their participation in the investigation, Connor and Stone aver that they only discussed the incident with one other corrections officer.

Viewing the evidence in the light most favorable to plaintiffs, Stone and Connor lied when they implicated Laramie in the assault and Hallam in a cover up. At a

minimum, they acted with reckless disregard of the truth. Whether this conduct was highly offensive is a question for the trier of fact. See Fischer v. Hooper, 143 N.H. 585, 590 (1999). Furthermore, while the Restatement defines "publicity" as something more than a communication to a third party, our supreme court has taken a broader view of "publicity" in the context of other invasion of privacy torts. In Karch, 147 N.H. at 535, the court held:

> Although the Restatement suggests that it is not an invasion of privacy to publicly disclose private facts to a single person or even to a small group . . . we believe that determining whether a disclosure of a private matter has become one of public knowledge does not, as a matter of law, depend on the number of people told. Whether publicity is achieved by broadcasting something private to a few people or to the masses is a conclusion best reached by the trier of fact.

For these reasons, Connor and Stones' motions for summary judgment on Count V of the writs are **DENIED**.

A different result is required with respect to Hallam's false light claim against Cattell. There is no evidence that any statements uttered by Cattell in the course of the disciplinary proceedings against Hallam were either intentionally false or made with reckless disregard for the truth. In fact, Hallam admitted that Connor approached him on the night of the incident and reported he thought he saw Laramie strike Kelly. Hallam did not correctly instruct Connor about what to do and did not file his own report accurately. The PAB found that Hallam's handling of the situation was a failure to meet work standards, though not one warranting termination. Defs.' Exh. E, PAB Order, at 12. Given the statements provided to him by Connor and Stone, no reasonable jury could find that Cattell acted with the requisite level of culpability to support a cause of

action for false light invasion of privacy. Accordingly, summary judgment is **GRANTED** in favor of Cattell on Count V of Hallam's writ.

IV. Conclusion

To summarize, the motions for summary judgment are denied with respect to plaintiffs' claims against defendants Stone and Connor as alleged in Counts III and V of the writs. In all other respects, the motions are granted.[4]

BY THE COURT:

August 27, 2007

ROBERT J. LYNN
Chief Justice

[4] With respect to the claims on which I have granted summary judgment in favor of the defendants, resolution of the claims on the grounds stated in the text makes it unnecessary for me to address defendants' alternative arguments that they are entitled to immunity on those claims pursuant to RSA 541-B:19, I(b), (c) and/or (d) (2007). As to the claims asserted against defendants Stone and Connor in Counts III and V of the writs, the record contains sufficient evidence of intentional bad faith conduct by these defendants to preclude a ruling at this stage that they were either exercising due care, as required by RSA 541-B:19, I(b), or that they reasonably believed their conduct was lawful, as required by RSA 541-B:19, I(d). Nor does the record afford a basis for determining, as a matter of law, that the actions of Stone and Connor involved a "discretionary executive or planning function" of the kind that would entitle them to immunity under RSA 541-B:19, I(c). See, e.g., Delaney v. State of New Hampshire, 146 N.H. 173, 176 (2001) ("discretionary function exception retains governmental immunity for conduct . . . characterized by the exercise of a high degree of official judgment or discretion" and "involv[ing] the weighing of alternatives and making choices with respect to public policy and planning").

Relying on RSA 541-B:9-a (2007), defendants also appear to contend that the surviving claims against Stone and Connor should be dismissed and the State substituted as a defendant. However, by its terms, RSA 541-B:9-a applies only when a claim "filed pursuant to this chapter is against both the state and an agent, official or employee of the state . . . ." Even assuming (which is far from obvious) that the claims asserted against Stone and Connor in Counts III and V can be viewed as having been filed "pursuant to [RSA 541-B]," these counts do not name both Stone and Connor and the State (or DOC) as defendants; rather the counts are brought against the individual defendants only. Thus, there is no basis for me to dismiss Stone and Connor as defendants pursuant to RSA 541-B:9-a.